

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 05-cv-329-GKF(SAJ)
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

**STATE OF OKLAHOMA'S NOTICE OF FILING OF SUPPLEMENTAL AUTHORITY  
IN FURTHER SUPPORT OF ITS RESPONSE TO "MOTION OF TYSON FOODS,  
INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS,  
INC., SIMMONS FOODS, INC., WILLOW BROOK FOODS, INC., CAL-MAINE  
FOODS, INC., CAL-MAINE FARMS, INC., GEORGE'S, INC., GEORGE'S  
FARMS, INC., PETERSON FARMS, INC., CARGILL TURKEY PRODUCTION,  
LLC, AND CARGILL, INC. FOR PARTIAL JUDGMENT AS A MATTER OF  
LAW BASED ON PLAINTIFFS' LACK OF STANDING"**

COMES NOW Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA (the "State"), and submits this Notice of Filing of Supplemental Authority in further support of the "State of Oklahoma's Response to 'Motion of Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Simmons Foods, Inc., Willow Brook Foods, Inc., Cal-Maine Foods, Inc., Cal-Maine Farms, Inc., George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Cargill Turkey Production, LLC, and Cargill, Inc. for Partial Judgment as a Matter of Law Based on Plaintiffs' [sic] Lack of Standing'" [DKT #1111] ("State's Response").

1. The State's Response was timely filed on March 30, 2007. *See* DKT #1111.
2. On April 2, 2007, the United States Supreme Court handed down its decision in *Massachusetts v. Environmental Protection Agency*, \_\_\_ U.S. \_\_\_, 2007 WL 957332 (April 2,

2007), a case involving review of the denial of a petition brought by a group of states, local governments and private organizations for the EPA to begin regulating certain emissions (including CO<sub>2</sub>) from motor vehicles under the Clean Air Act.

3. In this decision, the Supreme Court confirms the vitality of a state's standing to seek redress of matters pertaining to environmental harms. Specifically, the Supreme Court stated:

Well before the creation of the modern administrative state, we recognized that States are not normal litigants for the purposes of invoking federal jurisdiction. As Justice Holmes explained in *Georgia v. Tennessee Copper Co.*, 206 U. S. 230, 237 (1907), a case in which Georgia sought to protect its citizens from air pollution originating outside its borders:

'The case has been argued largely as if it were one between two private parties; but it is not. The very elements that would be relied upon in a suit between fellow-citizens as a ground for equitable relief are wanting here. The State owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This is a suit by a State for an injury to it in its capacity of quasi-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air.'

Just as Georgia's 'independent interest . . . in all the earth and air within its domain' supported federal jurisdiction a century ago, so too does Massachusetts' well-founded desire to preserve its sovereign territory today. Cf. *Alden v. Maine*, 527 U. S. 706, 715 (1999) (observing that in the federal system, the States 'are not relegated to the role of mere provinces or political corporations, but retain the dignity, though not the full authority, of sovereignty'). That Massachusetts does in fact own a great deal of the 'territory alleged to be affected' only reinforces the conclusion that its stake in the outcome of this case is sufficiently concrete to warrant the exercise of federal judicial power.

*Massachusetts*, \_\_\_ U.S. at \_\_\_, 2007 WL 957332, \*13 (emphasis added).

4. Similarly, the State in this action is asserting standing based on not only its property (including ownership) interests in natural resources located in the Oklahoma

portion of the Illinois River Watership, but also its "interest independent of and behind the titles of its citizens, in all the earth and air within its domain." *See, e.g.*, State's Response, pp. 1-2.

5. Accordingly, under *Massachusetts* the State has standing. Defendants' Motion should therefore be denied.

### **Conclusion**

Wherefore, in light of the foregoing, it is clear that the State has legally protected interests in the natural resources located in the Oklahoma portion of the Illinois River Watershed. Therefore, the "Motion of Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Simmons Foods, Inc., Willow Brook Foods, Inc., Cal-Maine Foods, Inc., Cal-Maine Farms, Inc., George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Cargill Turkey Production, LLC, and Cargill, Inc. for Partial Judgment as a Matter of Law Based on Plaintiffs' [sic] Lack of Standing" [DKT #1076] should be denied in its entirety.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628  
Attorney General  
Kelly H. Burch OBA #17067  
J. Trevor Hammons OBA #20234  
Assistant Attorneys General  
State of Oklahoma  
313 N.E. 21st St.  
Oklahoma City, OK 73105  
(405) 521-3921

/s/ M. David Riggs

M. David Riggs OBA #7583  
Joseph P. Lennart OBA #5371  
Richard T. Garren OBA #3253  
Douglas A. Wilson OBA #13128  
Sharon K. Weaver OBA #19010  
Robert A. Nance OBA #6581  
D. Sharon Gentry OBA #15641

Riggs, Abney, Neal, Turpen,  
Orbison & Lewis  
502 West Sixth Street  
Tulsa, OK 74119  
(918) 587-3161

James Randall Miller, OBA #6214  
Louis Werner Bullock, OBA #1305  
Miller Keffer & Bullock  
222 S. Kenosha  
Tulsa, Ok 74120-2421  
(918) 743-4460

David P. Page, OBA #6852  
Bell Legal Group  
222 S. Kenosha  
Tulsa, OK 74120  
(918) 398-6800

Frederick C. Baker  
(admitted *pro hac vice*)  
Elizabeth C. Ward  
(admitted *pro hac vice*)  
Elizabeth Claire Xidis  
(admitted *pro hac vice*)  
Lee M. Heath  
(admitted *pro hac vice*)  
Motley Rice, LLC  
28 Bridgeside Boulevard  
Mount Pleasant, SC 29465  
(843) 216-9280

William H. Narwold  
(admitted *pro hac vice*)  
Motley Rice, LLC  
20 Church Street, 17 Floor<sup>th</sup>  
Hartford, CT 06103  
(860) 882-1676

Attorneys for the State of Oklahoma

### CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2007, the foregoing document was electronically transmitted to the following:

**Jo Nan Allen** - jonanallen@yahoo.com bacaviola@yahoo.com  
**Frederick C Baker** - fbaker@motleyrice.com; mcarr@motleyrice.com;  
fhmorgan@motleyrice.com  
**Tim Keith Baker** - tbakerlaw@sbcglobal.net  
**Sherry P Bartley** - sbartley@mwsgw.com jdavis@mwsgw.com  
**Michael R. Bond** - michael.bond@kutakrock.com amy.smith@kutakrock.com  
**Douglas L Boyd** - dboyd31244@aol.com  
**Vicki Bronson** - vbronson@cwlaw.com lphillips@cwlaw.com  
**Paula M Buchwald** - pbuchwald@ryanwhaley.com  
**Louis Werner Bullock** - lbullock@mkblaw.net; nhodge@mkblaw.net; bdejong@mkblaw.net  
**A Michelle Campney** - campneym@wwhwlaw.com steelmana@wwhwlaw.com  
**Michael Lee Carr** - hm@holdenoklahoma.com MikeCarr@HoldenOklahoma.com  
**Bobby Jay Coffman** - bcoffman@loganlowry.com  
**Lloyd E Cole, Jr** - colelaw@alltel.net; gloriaeubanks@alltel.net; amy\_colelaw@alltel.net  
**Angela Diane Cotner** - AngelaCotnerEsq@yahoo.com  
**Reuben Davis** - rdavis@boonesmith.com  
**John Brian DesBarres** - mrjbdb@msn.com JohnD@wcalaw.com  
**W A Drew Edmondson** - fc\_docket@oag.state.ok.us; drew\_edmondson@oag.state.ok.us;  
suzy\_thrash@oag.state.ok.us.  
**Delmar R Ehrich** - dehrich@faegre.com; etriplett@faegre.com; qsperrazza@faegre.com  
**John R Elrod** - jelrod@cwlaw.com vmorgan@cwlaw.com  
**William Bernard Federman** - wfederman@aol.com; aw@federmanlaw.com;  
ngb@federmanlaw.com  
**Bruce Wayne Freeman** - bfreeman@cwlaw.com lclark@cwlaw.com  
**Ronnie Jack Freeman** - jfreeman@grahamfreeman.com  
**Richard T Garren** - rgarren@riggsabney.com dellis@riggsabney.com  
**Dorothy Sharon Gentry** - sgentry@riggsabney.com jzielinski@riggsabney.com  
**Robert W George** - robert.george@kutakrock.com; sue.arens@kutakrock.com;  
amy.smith@kutakrock.com  
**Tony Michael Graham** - tgraham@grahamfreeman.com  
**James Martin Graves** - jgraves@bassettlawfirm.com  
**Michael D Graves** - mgraves@hallestill.com; jspring@hallestill.com; smurphy@hallestill.com  
**Jennifer Stockton Griffin** - jgriffin@lathropgage.com  
**Carrie Griffith** - griffithlawoffice@yahoo.com  
**John Trevor Hammons** thammons@oag.state.ok.us; Trevor\_Hammons@oag.state.ok.us;  
Jean\_Burnett@oag.state.ok.us  
**Lee M Heath** - lheath@motleyrice.com  
**Michael Todd Hembree** - hembree1@aol.com traesmom\_md1@yahoo.com  
**Theresa Noble Hill** - thillcourts@rhodesokla.com mnave@rhodesokla.com  
**Philip D Hixon** - phixon@mcdaniel-lawfirm.com  
**Mark D Hopson** - mhopson@sidley.com joraker@sidley.com

**Kelly S Hunter Burch** - fc.docket@oag.state.ok.us; kelly\_burch@oag.state.ok.us;  
jean\_burnett@oag.state.ok.us  
**Thomas Janer** - SCMJ@sbcglobal.net; tjaner@cableone.net; lanaphillips@sbcglobal.net  
**Stephen L Jantzen** - sjantzen@ryanwhaley.com; mantene@ryanwhaley.com;  
loelke@ryanwhaley.com  
**Mackenzie Lea Hamilton Jessie** - maci.tbakerlaw@sbcglobal.net; tbakerlaw@sbcglobal.net;  
macijessie@yahoo.com  
**Bruce Jones** - bjones@faegre.com; dybarra@faegre.com; jintermill@faegre.com;  
cdolan@faegre.com  
**Jay Thomas Jorgensen** - jjorgensen@sidley.com  
**Krisann C. Kleibacker Lee** - kklea@faegre.com mlokken@faegre.com  
**Derek Stewart Allan Lawrence** - hm@holdenoklahoma.com;  
DerekLawrence@HoldenOklahoma.com  
**Raymond Thomas Lay** - rtl@kiralaw.com dianna@kiralaw.com  
**Nicole Marie Longwell** - nlongwell@mcdaniel-lawfirm.com lvictor@mcdaniel-lawfirm.com  
**Dara D Mann** - dmanna@faegre.com kolmscheid@faegre.com  
**Linda C Martin** - lmartin@dsda.com mschooling@dsda.com  
**Archer Scott McDaniel** - smcdaniel@mcdaniel-lawfirm.com jwaller@mcdaniel-lawfirm.com  
**Robert Park Medearis, Jr** - medearislawfirm@sbcglobal.net  
**James Randall Miller** - rmiller@mkblaw.net; smilata@mkblaw.net; clagrone@mkblaw.net  
**Charles Livingston Moulton** - Charles.Moulton@arkansasag.gov;  
Kendra.Jones@arkansasag.gov  
**Robert Allen Nance** - mance@riggsabney.com jzielinski@riggsabney.com  
**William H Narwold** - bnarwold@motleyrice.com  
**John Stephen Neas** - steve\_neas@yahoo.com  
**George W Owens** - gwo@owenslawfirmmpc.com ka@owenslawfirmmpc.com  
**David Phillip Page** - dpag@edbelllaw.com smilata@edbelllaw.com  
**Michael Andrew Pollard** - mpollard@boonesmith.com kmiller@boonesmith.com  
**Marcus N Ratcliff** - mratcliff@lswsl.com sshanks@lswsl.com  
**Robert Paul Redemann** - rredemann@pmrlaw.net scouch@pmrlaw.net  
**Melvin David Riggs** - driggs@riggsabney.com jsummerlin@riggsabney.com  
**Randall Eugene Rose** - rer@owenslawfirmmpc.com ka@owenslawfirmmpc.com  
**Patrick Michael Ryan** - pryan@ryanwhaley.com; jmickle@ryanwhaley.com;  
amcpherson@ryanwhaley.com  
**Laura E Samuelson** - lsamuelson@lswsl.com lsamuelson@gmail.com  
**Robert E Sanders** - rsanders@youngwilliams.com  
**David Charles Senger** - dsenger@pmrlaw.net; scouch@pmrlaw.net; ntorres@pmrlaw.net  
**Jennifer Faith Sherrill** - jfs@federmanlaw.com; law@federmanlaw.com;  
ngb@federmanlaw.com  
**Michelle B Skeens** - hm@holdenokla.com mskeens@holdenokla.com  
**William Francis Smith** - bsmith@grahamfreeman.com  
**Monte W Strout** - strout@xtremeinet.net  
**Erin Walker Thompson** - Erin.Thompson@kutakrock.com  
**Colin Hampton Tucker** - chtucker@rhodesokla.com scottom@rhodesokla.com  
**John H Tucker** - jtuckercourts@rhodesokla.com mbryce@rhodesokla.com  
**Kenneth Edward Wagner** - kwagner@lswsl.com sshanks@lswsl.com

**Elizabeth C Ward** - lward@motleyrice.com  
**Sharon K Weaver** - sweaver@riggsabney.com lpearson@riggsabney.com  
**Timothy K Webster** - twebster@sidley.com jwedeking@sidley.com  
**Terry Wayen West** - terry@thewestlawfirm.com  
**Dale Kenyon Williams, Jr** - kwilliams@hallestill.com; jspring@hallestill.com;  
smurphy@hallestill.com  
**Edwin Stephen Williams** - steve.williams@youngwilliams.com  
**Douglas Allen Wilson** - Doug\_Wilson@riggsabney.com; jsummerlin@riggsabney.com  
**J Ron Wright** - ron@wsfw-ok.com susan@wsfw-ok.com  
**Elizabeth Claire Xidis** - cxidis@motleyrice.com  
**Lawrence W Zeringue** - lzingue@pmrlaw.net scouch@pmrlaw.net

I further hereby certify that on this 5th day of April, 2007, I served the forgoing document by U.S. Postal Service on the following:

**Justin Allen**  
**Jim DePriest**  
**Dustin McDaniel**  
Office of the Attorney General (Little Rock)  
323 Center Street, Suite 200  
Little Rock, AR 72201-2610

**Jim Bagby**  
RR 2, Box 1711  
Westville, OK 74965

**Gordon and Susann Clinton**  
23605 S. Goodnight Lane  
Welling, OK 74471

**Eugene Dill**  
P.O. Box 46  
Cookson, OK 74424

**Marjorie Garman**  
5116 Highway 10  
Tahlequah, OK 74464

**Thomas Green**  
Sidley, Austin, Brown & Wood  
1501 K Street NW  
Washington, DC 20005

**G Craig Heffington**  
20144 W. Sixshooter Road  
Cookson, OK 74427

**William and Cherrie House**  
P.O. Box 1097  
Stilwell, OK 74960

**John E. and Virginia W. Adair Family Trust**  
Rt 2, Box 1160  
Stilwell, OK 74960

**James and Dorothy Lamb**  
Route 1, Box 253  
Gore, OK 74435

**Jerry M. Maddux**  
Selby, Connor, Maddux, Janer  
P.O. Box Z  
Bartlesville, OK 74005-5025

**Doris Mares**  
P.O. Box 46  
Cookson, OK 74424

**Richard and Donna Parker**  
34996 S 502 Road  
Park Hill, OK 74451

**C. Miles Tolbert**  
Secretary of Environment  
State of Oklahoma  
3800 North Classen  
Oklahoma City, OK 73118

**Robin L. Wofford**  
Rt. 2, Box 370  
Watts, OK 74964

/s/ M. David Riggs  
M. David Riggs